

IN THE MATTER OF	:	BEFORE THE
TIMOTHY MCCORMICK	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BOA Case No. 09-018V

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DECISION AND ORDER

On June 15, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Thomas S. McCormick for a variance to reduce the 7.5-foot side setback to 5.25 inches for an addition to a single-family detached dwelling located in an R-12 (Residential: Single: Family) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Thomas McCormick, the property owner, testified on his own behalf. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The 13,531-square foot, slightly irregularly shaped property is located on the north side of Railroad Avenue about 230 feet southeast of Main Street and is known as 5639 Railroad Avenue (the "Property"). The Property lies in the 1st Election District and is identified on Tax Map 38, Grid 4, as Parcel 1, Lot 1.

2. The Property is improved by a two-story, wood frame structure that has apparently been substantially rebuilt on the existing foundation. According to the variance plan, the front portion of the dwelling is sited 9 feet from the southeasterly lot line, and the rear section, about 7 ½ feet. The house is accessed from a wide driveway running along the northwesterly lot line, which leads to a paved parking pad in the central portion of the Property. Beyond the driveway is a 20-foot wide ingress/egress easement.

3. Vicinal Properties. Adjacent properties are also zoned R-12 and are each improved with a single-family detached dwelling. The B-1 zoned Property across Railroad Avenue appears to be used as a parking lot.

4. The Petitioner is requesting a variance to reduce the 7.5-foot side setback to 5.25 feet for a 3'±, 61.60-square foot family room addition. The variance petition depicts two new Manhattan euonymus bushes in the side buffer to screen the addition.

5. Based on my site visit, it appeared that the entire dwelling was actually closer than 7.5 feet from the side lot line. It also appeared that several dwellings in the long-existing community were much sited much closer to or on the 7.5-foot side setback.

6. Mr. McCormick testified that the dwelling was constructed in the early 1920s and that the air conditioning unit on the adjacent southerly property was actually on his property.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique

physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance for the addition complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or

would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

1. Ordinarily, existing structures may not be considered "unique" features of a property. In this case, however, the existing dwelling is partially situated within the required 7.5-foot setback area. As such, the dwelling is a noncomplying structure and therefore constitutes a unique physical condition of the Property. Consequently, I find the location of the dwelling is a unique physical condition that causes the Petitioner practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The one-story addition will be used for a permitted purpose and will not change the nature or intensity of use. Since many other dwellings in the old ElkrIDGE community are sited at or within the side buffer, having been constructed prior to county zoning regulations, the variance will not alter neighborhood character. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the Property's shape and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The second-story addition is a reasonable size. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this 29th Day of June 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Timothy McCormick for a variance to reduce the 7.5-foot building restriction line to 5.25 feet for an addition in an R-12 Zoning District is **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the addition as described in the petition submitted and not to any activities, uses, structures, or additions on the Property.
2. The Petitioner shall plant two new Manhattan euonymus bushes in the side buffer to screen the addition, as depicted on the variance petition plan.
3. The Petitioners shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: 7/1/09

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.